

(1991) 02 KAR CK 0063
In the Karnataka High Court
Case No : R.S.A. No. 114/1991

State of Karnataka and Others

APPELLANT

Vs

Karim Sab

RESPONDENT

Date of Decision : 18-02-1991

Acts Referred:

Specific Relief Act, 1963 — Section 35

Citation : (1991) 1 KarLJ 598

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

Chandrakantaraj Urs, J.-Admittedly, the Government had acquired only 5 acres 30 guntas of land in Block No. 154 claimed by the plaintiff in toto. He, therefore, presented the suit in the Court of the Munsiff at Indi in Bijapur District inter alia on the ground that the State Government was interfering with his peaceful possession of the land comprised in Block No. 154, measuring 19 acres and 15 guntas. He had pleaded inter alia that the Government allowed without acquiring the land for construction of temporary houses for Lambani Thanda on some portions of the suit land which was without the authority of law. Therefore, he sought injunction against the State represented by the Deputy Commissioner, Bijapur, the Assistant Commissioner, Indi, the Block Development Officer, Indi, the Village Accountant, Salotagi.

2. The respondents having entered appearance pleaded that the land was acquired as far back as in the year 1954 and even an award had been made. It was contended for the Government that the area was acquired during the year 1954 by mutation Entry No. 1809 and not in the year 1981. They pleaded that they were in possession of the acquired area. At best the plaintiff could only seek compensation.

2. Having framed issues relevant, the learned Munsiff came to the conclusion that the plaintiff had not proved his ownership of the land. He also held that the Government had not proved the acquisition. The Court, however, declined to grant the relief prayed for by the plaintiff on the findings that the plaintiff himself

had admitted the existence of Lambani Thanda houses on 5 acres and 7 guntas and that did not constitute interference by defendants.

3. As is obvious from the cause title, none of the Lambani Thanda was made a party. It was in that circumstance the suit came to be dismissed.

4. On appeal, the Appellate Court has held on Point No. 1 formulated by it: Whether the plaintiff was the owner of the suit property in Block No. 154 in the affirmative. But in regard to Point No. 2, whether he was entitled to injunction, it refused the relief in respect of the land occupied by the Lambani houses.

5. At no point of time, the title of plaintiff was denied by the defendants. On the other hand, it was the stand of the State that it had acquired out of Block No. 154, 5 acres and 30 guntas of land. Therefore, the Munsiff was clearly in error in denying the title to the plaintiff whose title to the remaining land had never been challenged. Rightly, as possession admittedly is with the Lambani Thanda for whom the land was said to have been acquired and they not being parties and the Government officials in any way not interfering with the possession of the owner in respect of the remaining area in the survey number, the Appellate Court correctly confined its relief on the two points formulated to the extent which was in possession of the plaintiff and declared his title to the same and refused injunction in respect of the land occupied by Lambani Thanda.

6. While one side claimed that an award was made, the other side claimed that there was no award at all. In the pleadings of the State, it was found that they admitted that the only right of the plaintiff had in respect of 5 acres and 30 guntas of land was to claim compensation and no more. That is a matter that should be agitated elsewhere by the plaintiff and not in a suit for declaration of title and injunction.

7. In the result, I do not see any merit in this appeal filed by the defendants in the trial Court when on their own pleadings and admission in regard to the relief granted, the second appeal is not maintainable. It is dismissed.